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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/622,292	07/18/2003	Josef Theurer	THEURER-WORGOTTER-32	7245
75	90 06/03/2004		EXAMI	NER
COLLARD &	,		MCCARRY JR, ROBERT J	
1077 Northern Boulevard Roslyn, NY 11576			ART UNIT PAPER NUMBE	
•			3617	-

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)				
Office Action Comment	10/622,292	THEURER ET AL.				
Office Action Summary	Examiner	Art Unit				
	Robert J. McCarry, Jr.	3617				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
1) Responsive to communication(s) filed on						
	= action is non-final.					
3) Since this application is in condition for allowar	· · · · · · · · · · · · · · · · · · ·					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims						
4)⊠ Claim(s) <u>1-8</u> is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) is/are allowed.						
6)⊠ Claim(s) <u>1-8</u> is/are rejected.						
7)⊠ Claim(s) <u>7</u> is/are objected to.						
8) Claim(s) are subject to restriction and/or election requirement.						
Application Papers						
9)☐ The specification is objected to by the Examiner.						
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119						
	priority under 35 H.S.C. & 110/c	a) (d) or (f)				
12)⊠ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a)⊠ All b)□ Some * c)□ None of:						
1. ☐ Certified copies of the priority document	s have been received					
<u> </u>		tion No				
<ul> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage</li> </ul>						
application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list of the certified copies not received.						
	or the continue copies not receiv					
·	•					
Attachment(s)	•					
1) Notice of References Cited (PTO-892)	4) Interview Summar	v (PTO-413)				
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail D	oate				
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 7/18/03.	5)	Patent Application (PTO-152)				
U.S. Patent and Trademark Office	-, 🗀 🗢					
PTOL-326 (Rev. 1-04) Office Ac	tion Summary P	art of Paper No./Mail Date 20040527				

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## **DETAILED ACTION**

## Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Plasser (EP 429713 B1).

Plasser discloses a freight train for moving bulk material comprised of a plurality of loading vehicles 2. At the bottom of each vehicle is a conveyor belt 6 for moving bulk material from the rear to the front of the car. At the front of the car is a transfer belt 9 for moving the bulk material from a first car to an adjacent preceding car. A sensor 10 is mounted on the car and by using a laser can determine the height of the ballast in the hopper. Once the sensor determines that the ballast has in fact reached a maximum height the sensor will communicate with a central control unit 15 and stop the convey or belts on the vehicles.

## Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Whitaker, Jr. (US 5,201,127) discloses a vehicle used to move bulk ballast material with a height sensor on the hopper section of the vehicle. Theurer

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et al (US 5,400,718) discloses a structure for a hopper car using multiple conveyor

belts.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (703)

305-0581. The examiner can normally be reached on Monday through Friday 8:00am

to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, S. Joseph Morano can be reached on (703) 308-0230. The fax phone

number for the organization where this application or proceeding is assigned is 703-

872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

**RJM** 

May 27, 2004

SUPERVISORY PATENT EXAMINER

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